

LDF

Local Development Framework

Affordable Housing Supplementary Planning Document

Adopted Version

February 2007



COTSWOLD DISTRICT COUNCIL

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Local Development Framework

Affordable Housing
Supplementary Planning Document
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I. Introduction

- I.1 The limited supply of, and high demand for, housing in the Cotswolds has led to high prices and rents. It is now extremely difficult for local people on low incomes, and increasingly for those people on middle incomes, to afford a home of their own. Unless more affordable housing is provided, there is a danger that those on lower and middle incomes, particularly the young, will be forced to leave the district in increasing numbers. As a result, our communities will be damaged and the district's age and social structure will become even more biased towards the elderly and the wealthy.
- I.2 The problem of affordable housing is a cause of great concern for many local people, organisations and businesses in the Cotswolds. As a result of this need and local concern, as expressed within the Council's State of the District Report, the provision of affordable housing is one of the District Council's five priorities. Affordable Housing is also a key issue within other local strategies and parish plans, as well as being identified as a key priority by the Cotswold Local Strategic Partnership.

Adopted Local Plan Policy 2001-2011

- I.3 National and Regional Planning Policy advises that the provision of affordable housing is a material consideration which should be taken into account in the determination of planning applications for new housing.
- I.4 Policy 21 of the Cotswold District Local Plan 2001-2011 (Adopted April 2006) states that *"in order to meet demonstrated needs, a proportion of affordable housing will be sought as part of the development of any significant site in Cirencester, Tetbury, Moreton-in-Marsh, Bourton-on-the-Water and any site elsewhere, whether or not the site is specifically allocated."*
- I.5 The Local Plan Policy seeks up to 50% affordable housing:
- on sites of 10 or more dwellings / 0.3 ha. or above in Cirencester, Tetbury, Moreton-in-Marsh and Bourton-on-the-Water; and
 - on any sites elsewhere
- I.6 Policy 21 also maintains the policy for 'exception sites' in rural areas where a demonstrable need exists which cannot otherwise be met by means of provision in the plan. Exception sites, however, will not be allowed in settlements with populations over 3,000. These include Cirencester, Tetbury, Moreton-in-Marsh and Bourton-on-the-Water. A full copy of Policy 21 is provided in Appendix A.

Aims, Strategic Objectives and Content of this SPD

- 1.7 The intention of this Affordable Housing Supplementary Planning Document (SPD) is to provide further detail to Policy 21 of the Adopted Local Plan and establish a set of clear guidance procedures as well as provide practical advice for all those involved in the provision of affordable housing in Cotswold District.
- 1.8 The aims and objectives are informed by the Sustainability Appraisal Pre-Production scoping report (published for consultation in July 2005). This Affordable Housing SPD therefore provides details on the definition of affordable housing; the calculation of the mix and type of affordable housing; funding arrangements; financial viability assessments; use and calculation of 'in lieu' provision; location of exception sites; integration and tenure blind design; as well as model / template section 106 agreements. It also includes information on the administration and protocol for delivering affordable housing through the determination of planning applications in terms of who to contact, what information is required and how the District Council handles affordable housing matters.

Role / Status of the Affordable Housing SPD

- 1.9 This Affordable Housing SPD is a Local Development Document, prepared in line with the provisions of the Planning and Compensation Act (Local Development) (England) [2004]. It forms part of the Cotswold Local Development Framework (LDF), along with the Adopted Local Plan and other emerging local development documents.
- 1.10 The SPD is consistent with Policy 21 of the Adopted Local Plan 2001 - 2011 and is thereby in conformity with national planning policy and the Regional Spatial Strategy. This SPD forms a material consideration in the determination of planning applications.
- 1.11 SPDs do not have the same status as Development Plan Documents, and therefore do not need to be subject to independent examination. However, very similar procedures of community involvement and 'strategic appraisal' are still required. Reports on both of these have been published during the preparation of this SPD.

2. Defining Affordable Housing & Assessing Housing needs

- 2.1 'Affordable Housing' in Policy 21 of the Adopted Local Plan 2001-2011, is defined primarily by affordability and not by tenure: *"Dwellings for sale or rent at a price level below the going market rate, and which is related to the ability to pay of those identified in a housing survey as being in need."*
- 2.2 Low cost market housing does not contribute towards affordable housing in the District. Furthermore, the Government, through Planning Policy Statement 3: Housing, does not consider it to be affordable housing. The table opposite sets out the definition of affordable housing contained in Annex B of PPS3: Housing.
- 2.3 In addition, different types of specialist Affordable Housing will need to be incorporated in development designs, for instance housing suited to people with restricted mobility.
- 2.4 The District Council will normally ensure, through a legal agreement, that affordable housing is secured in perpetuity in rural exception schemes. Affordable housing should include provision for the home to remain at an affordable price for future eligible households, or if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision (PPS3 Annex B 'Definitions').

Registered Social Landlords

- 2.5 The term Registered Social Landlord (RSL) applies to housing landlords registered with the Housing Corporation. These may be charities that are Housing Associations, Industrial Provident Societies and Not-for-Profit Companies. Appendix C provides a list of the District Council's preferred RSL partners.
- 2.6 The Council recognises that some developers may secure contractual arrangements with the Housing Corporation which would enable them to provide affordable housing directly and oblige them to meet certain standards on quality of accommodation and service and on the cost of homes. Whilst these obligations on developers are not as extensive as the regulatory expectations for RSLs, the Council will consider developers with continuing contractual arrangements with the Housing Corporation as suitable to provide affordable housing.

PPS 3: Definition of Affordable Housing

AFFORDABLE HOUSING is:

- Affordable housing includes social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market. Affordable housing should:
 - meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices.
 - Include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision.

SOCIAL RENTED HOUSING is:

- Rented housing owned and managed by local authorities and registered social landlords, for which guideline target rents are determined through the national rent regime.
- It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Housing Corporation as a condition of grant.

INTERMEDIATE AFFORDABLE HOUSING is:

- Housing at prices and rents above those of social rent, but below market price or rents, and which meet the criteria set out above. These can include shared equity products (e.g. HomeBuy), other low cost homes for sale and intermediate rent.

The definition does not exclude homes provided by private sector bodies or provided without grant funding. Where such homes meet the definition above, they may be considered, for planning purposes, as affordable housing. Whereas, those homes that do not meet the definition, for example, 'low cost market' housing, may not be considered for planning purposes, as affordable housing.

Assessing Housing Needs

- 2.7 In determining housing needs the Council uses a number of main sources.
- 2.8 Briefly these are the **District Housing Needs Assessment** which was last published in its full version in 2005. Housing needs assessments are normally recommended to be fully updated approximately every five years. The 2005 survey was based on detailed face to face interviews with 700 households. This combined with a range of other data, such as expected moves in and out of the District, house prices and income were presented as a 'snapshot' of the number of households in the District who could not afford open market housing. This projection was updated in 2006 and will be updated annually until another full survey is expected to be undertaken around 2009. The survey found that there are around 1,200 households in the District that would like to, but are unable to, move because they cannot afford to rent or buy on the open market. In addition, the Council is working within a county-wide partnership to develop a Strategic Housing Market Assessment.
- 2.9 A number of Parish Councils have undertaken more detailed and qualitative local **Parish Housing Needs Surveys**. Their findings will take precedence over the District wide survey in determining specific parish housing needs. Surveys are undertaken independent of the Council by the Gloucestershire Rural Housing Enabler working closely with a specific parish. A number of surveys have been recently undertaken and others are planned. The Local Plan (Adopted 2006) requires Parish Housing Needs Surveys as they provide robust information to support the development of Rural Exception Sites.
- 2.10 Supplementary information on housing needs comes from the **Council's housing register**. This indicates how many applicants, and of what type, have expressed interest in affordable housing in particular parishes and as an overall total across the District. It provides information on the age and type of household and whether they are interested in affordable rented housing or subsidised low cost home ownership. The data is divided between households with a housing need i.e those whose housing circumstances are in some way not suitable, and those without need. The information is regarded as indicative because the data is based upon households expressing their interest in as many parishes as they wish. It is best used to support the information sources outlined above.
- 2.11 Access to new affordable housing will be through the HomeView Register, the Council's Choice-Based Lettings System that allows people to bid for different types of affordable housing.

Specialist Types of Housing Needs

Key Worker provision

- Priority will be given to those households meeting specified key worker criteria. Such criteria will reflect employee shortages in specific key services.
- Key Workers are considered to be those who are essential to delivering local services. For example, the Council currently defines key workers as: NHS Nursing Staff; Social Services Care Workers; NHS Occupational Therapists; Social Workers; Police Officers; Probation officers; Prison Officers; Teachers; and Fire Fighters. The Council will review its definition of key workers to reflect changing circumstances.
- According to the Housing Needs Assessment (2005), 13.1% of the Cotswold workforce are keyworkers.

Provision for Disabled and mobility impaired

- All new housing should be accessible for visiting by people with physical or mobility impairments, in particular wheelchair users should be able to access the main living room of new houses via accessible paving outside the external door, and all external doors should be wheelchair accessible;
- The Council will negotiate the provision of a proportion of specialist, wheelchair and other supported housing with reference to local needs assessments and the requirements of the Housing Corporation and Building Regulations.



3. How the range, type and mix of affordable housing will be calculated on development sites

- 3.1 The District Council will strictly apply Policy 21 of the Local Plan 2001 - 2011 (provided in Appendix A).
- 3.2 It is important that the affordable housing provided through the planning system is geared towards the housing needs of people with a defined 'local connection' with Cotswold District.
- 3.3 The range, type and mix of affordable accommodation required on development sites will be determined by a combination of the results of housing needs surveys, information from the waiting lists (HomeView database), consideration of existing, affordable housing stock, local housing market information as well as any available information from the Primary Care Trust, Gloucestershire Partnership Trust, Community and Adult Directorate (Social Services) and County Council Education Department.
- 3.4 We aim to achieve a range, type, mix, and provision which will reflect the need for specialist and special needs housing, based on up to date assessments of need and other information, including the constraints of sites.
- 3.5 Cotswold District Council officers will inform the developer through pre-application discussions what the requirements are and how they may be accommodated. These requirements should then inform the draft section 106 agreement which must be submitted by the prospective developer at the outline or full planning application stage. (Further details are provided in section 9 of this SPD).
- 3.6 The dwelling mix for different needs will also depend on the scale and nature of the development, its location and facilities available. Another influencing factor will be the existing tenure and social mix in a neighbourhood, in order to achieve more balanced communities.
- 3.7 Based on analysis of housing needs as well as the current affordable housing stock (see the SEA / SA Pre-production Scoping report and other background papers), Cotswold District will normally seek a range of dwelling types, based on the following proportion, whilst still ensuring a reasonable mix and ability to pay:
 - Broad targets of 2/3 social rented, 1/3 subsidised low cost home ownership;
 - The proportion of house types will depend upon local housing needs and constraints of each site. As a guide the Council would normally seek approximately 40% 1 bed, 30% 2 bed, 25% 3 bed, and 5% 4 bedroom dwellings.

- 3.8 Affordable housing must be genuinely affordable to those in housing need. In 2005, the lower quartile household income in Cotswold District fell within the range of £15-20,000 (Data source: CACI Annual Paycheck Information). The annual housing costs (including rent and service charge) should be no greater than 30-40% of net household income (this percentage will be reviewed to reflect change in income:price ratios).
- 3.9 Development briefs and Master Plans for sites will make specific recommendations in relation to range, mix and type of affordable housing and will also be subject to public consultation. The Cotswold Local Development Framework (LDF) will also include documents such as a site-specific allocation Development Plan Document (DPD) and potentially Area Action Plan DPDs. These documents are key development plan mechanisms for delivering (and expressing) the range, mix and type of affordable housing.
- 3.10 It is also important that the remaining provision of open market housing on a new housing development also contributes to providing the full spectrum of housing to meet the needs of the community. PPS3 states that local planning authorities should take account of the need to deliver low cost market housing as part of the overall housing mix.
- 3.11 The precise mix of dwelling type for the affordable element will change as needs vary over time and from location to location.
- 3.12 Therefore this matter should be discussed by a prospective developer at an early stage with the District Council's relevant Development Control Officer before any application is submitted (see section 9).



4. Details on funding arrangements and signposts to the likelihood of any potential grant opportunities

- 4.1 The fundamental purpose of this SPD is to provide housing that is genuinely affordable. This means that an appropriate funding package needs to be secured with developers to deliver affordable housing.
- 4.2 In line with the government's sustainable communities agenda, the Housing Corporation is very selective about the location and distribution of Social Housing Grant. SHG is available to Local Authorities through partnerships with RSLs in exceptional circumstances, and its availability will be determined by regional policy through the Regional Housing Strategy. The Housing Corporation may also put some grant into schemes that raise quality but this will also be subject to financial sustainability appraisal. Further details can be found in the Housing Corporation's '*Capital Funding Guide – General points applicable to Social Housing Grant funding through the Housing Corporation and Local Authorities*' which is available on the Housing Corporation website; www.housingcorp.gov.uk/resources/cfg.htm
- 4.3 In the absence of SHG, usually, the only funding source available to meet the capital costs of affordable housing is borrowing, by the RSL or landlord.
- 4.4 RSLs assess their ability to finance the capital costs of affordable housing based partly on any sales receipts they might receive from the disposal of some equity (this applies only to low-cost home ownership schemes) and mainly on borrowings which are repaid from the rental stream from retained equity. For social rented housing, all of the capital cost has to be met from borrowing which is repaid with rental income.
- 4.5 In calculating how much of rental income is available to meet loan repayments, an RSL will make reasonable allowances for the cost of managing and maintaining the affordable housing. Therefore, only the net rental income is available for loan repayment.
- 4.6 For social rented housing, rent levels are predetermined by reference to a system operated by The Housing Corporation. This establishes target rents by dwelling size and they vary from district to district, reflecting local values and earnings. Because these rents are predetermined and because it is possible to identify typical reasonable costs for managing and maintaining social rented housing, it is also possible to work out an amount which any RSL should be able to pay for a social rented dwelling of a particular size in a particular district. Similarly, a range of prices can be established for the amount any RSL should be able to pay for the rented element of a low-cost home ownership dwelling, if rent is charged to the occupant such as with shared ownership dwellings.

- 4.7 Cotswold District Council, has published the prices that the Council's preferred partner RSLs can afford to pay developers for social rented affordable housing and a percentage of the open market value (OMV) for subsidised low cost home ownership, without the aid of public subsidy. Prices are given for a range of dwelling types, for social rented. This provides landowners and developers with clarity and a 'level playing field', thereby improving the negotiating process for affordable housing and reducing uncertainty for landowners and developers. Appendix D contains the current details of the Council's affordable housing pricing policy. It assumes that no Social Housing Grant or other funding is available.
- 4.8 The affordable housing pricing policy is based on completed dwellings constructed on land with all services connected and constructed in accordance with relevant legislation and regulations. The schedule will be updated on a regular basis to ensure the prices and percentage of OMV remain valid and reflect changing housing market conditions and target rents notified by the Housing Corporation.
- 4.9 The Council's preference is for the affordable housing to be provided on site and constructed by the developer. However, in exceptional circumstances the Council may agree to the transfer of the land and / or buildings that will accommodate the affordable housing. The Council will expect the relevant land or buildings to be transferred to an Affordable Housing provider at nil value and where appropriate with a cash subsidy, sufficient to enable the affordable housing to be provided at unit costs equivalent to the figures quoted in Appendix D.
- 4.10 If a developer or applicant believes that it cannot meet the Council's affordable housing policy expectations, including the pricing policy set out in Appendix D, because it faces significant economic constraints, then it should discuss the financial issues with the Council. More guidance on presenting a case for significant economic constraints on a scheme is set out in the following section.



5. Assessing financial viability

- 5.1 Any site suitable for housing, should normally be considered suitable to provide some affordable housing in line with Policy 21 of the Cotswold District Local Plan 2001-2011 (Adopted April 2006).
- 5.2 Where a developer considers that there are significant economic constraints affecting a development and that these are sufficient to jeopardise the developer meeting the Council's affordable housing policy expectations, then the developer will need to provide financial and other information to enable the Council to assess the nature, extent and impact of the economic constraints.
- 5.3 As a guide, the following schedule highlights the main economic factors the Council would expect to assess, the information which will be required from the developer and the action the Council will take to carry out the assessment. This list is not exhaustive and further information may be required.

i. Site or building acquisition cost:

Information to be provided by the developer: How much the developer has paid or is proposing to pay for the land or building, net of any site abnormalities and including VAT if applicable.

Whether the site or building has been fully acquired at this price and when exchange of contracts took place ('full acquisition' would not normally mean exchange of a conditional contract or entering an option agreement).

Action to be taken by the Council:

The Council will obtain an independent opinion from a qualified professional valuer with local market knowledge of:

- the value of the site or building in its existing use.
- the value of the site or building for the proposed residential use.
- the value of the site or building for any realistic alternative uses.

ii. Construction costs:

Information to be provided by the developer: How much the developer is estimating to pay for all aspects of the construction of the development including abnormalities, siteworks, houseworks and estate completions. Abnormals should be itemised and costed individually and general construction costs should also be expressed as a price per m² or ft² of proposed built form.

What allowances are made within the estimated figures for building cost inflation.

Action to be taken by the Council:

The Council will obtain independent advice from a qualified professional quantity surveyor with knowledge of the local construction sector on:

- the reasonableness of the estimates for general construction.
- the reasonableness of the estimated abnormal costs and the construction solutions which underlie them.

iii. Fees and Other On-Costs

Information to be provided by the developer: An itemised breakdown of the main development and sales related fees and other costs the developer expects to incur including fees for design, engineering, planning, building control, surveying, warranties and such like, legal fees, introduction fees, marketing and direct sales costs and interest charges where identified at a scheme level.

Action to be taken by the Council:

The Council will obtain independent advice from a qualified professional quantity surveyor and/or development consultant on the reasonableness of the estimates.

iv. Projected Sale Prices for Dwellings

Information to be provided by the developer: How much the developer is proposing to sell the completed dwellings for broken down by dwelling type.

What allowance has been made by the developer for inflation on values up to point of sale when compared to prices applicable at the time of compiling the information.

Action to be taken by the Council:

The Council will obtain an independent opinion from a qualified professional valuer with local market knowledge of both the proposed sale prices compared to reasonable market expectations and the assumptions on house price inflation.

v. Gross Margin

Information to be provided by the developer: As a percentage of the proposed gross sales value of the developments, what contribution the developer is assuming to achieve for overheads and profit, combined.

Action to be taken by the Council: The Council will obtain independent advice from a qualified professional quantity surveyor and/or development consultant on the reasonableness of the estimates.

vi. Other Costs and Receipts

Information to be provided by the developer: How much the developer has allowed, by item, for any other contributions or costs associated with the development including planning gain contributions for education, transport, local facilities and such like.

How much the developer has allowed in its assessment of viability for receipts attributable to providing affordable housing in accordance with the Council's policy expectations, broken down by dwelling numbers, types and tenure.

Action to be taken by the Council: The Council will compare the estimated figures with its own knowledge on levels of planning gain contributions sought and affordable housing required and prices attributable to this. When appropriate, the Council will seek advice from suitably qualified external consultants to validate certain cost or receipt assumptions.

- 5.4 The Council will carry out its own assessment of scheme viability based on the information it receives from the developer and from its external advisors and its own information sources.
- 5.5 Following the appraisal process, if the developer has demonstrated genuine significant economic constraints, the Council will discuss with the developer the options available to achieve economic viability, including accessing Social Housing Grant on a 'gap' funding basis or adjusting the balance of affordable housing provision.
- 5.6 When a developer has demonstrated genuine significant economic constraints, the Council will pay the cost of obtaining the independent advice, referred to in Section 5.3, which helped to verify the constraints. In the event that the developer cannot demonstrate genuine significant economic constraints, the Council will expect to recover the cost of obtaining independent advice from the developer.
- 5.7 Any external consultant used by the Council will be subject to entering a confidentiality agreement relating to information provided by the developer.

6. Use and calculation of commuted payments

- 6.1 Affordable Housing should be provided on site. This is in line with other planning policies seeking to create mixed and balanced communities, including PPS3: Housing.
- 6.2 Only in certain circumstances will the planning authority accept commuted payments ‘in lieu’ of provision of completed units. The developer will need to provide sound and detailed reasons why the affordable housing cannot be incorporated onto the original site.
- 6.3 These circumstances might be where the locality or physical characteristics, or where the conservation requirements for the site, make it unviable or impractical; and where the District Council thinks the overall need would be better served by the negotiation of a commuted sum. Examples of these might include:
 1. Where there is a preponderance of a particular type or tenure of affordable housing within the immediate locality of the proposed development;
 2. Other housing priorities identified by the Council, which could not otherwise be met within required timescales.
- 6.4 In any event the developer will still need to ensure an appropriate mix and balance of market dwellings on the original site.
- 6.5 If such payments are made they will be “held in trust” by the Council to ensure they are used for providing affordable housing locally within a short timescale (usually within 5 years). After 5 years unspent sums would be likely to be refundable with interest.
- 6.6 Application of the funds will accord with the Council’s Housing Strategy, which is available from the Council’s Housing Strategy Team.
- 6.7 The Section 106 monies will be used to fund approved affordable housing providers (including the Council) to provide affordable housing subject to the terms of the Section 106 Agreement.



7. Integrating affordable housing into the design and layout of high quality new developments

- 7.1 Affordable housing should not be distinguishable from market housing in terms of location, appearance, build quality and materials. Reductions in size, use of substandard materials, or poor finishing and detailing should not be perceived as an acceptable shortcut to affordability.
- 7.2 Affordable housing should blend in with the neighbouring open market housing in order that they are integrated properly whilst providing quality and choice in the neighbourhood.
- 7.3 The Housing Corporation Scheme Development Standards (SDS) is established as good practice for the affordable housing sector as a whole.
- 7.4 All affordable housing should comply with these standards (or the “Design and Quality Standards” published by the Housing Corporation which will supersede the SDS). This approach ensures RSLs and affordable housing providers are working to the same criteria and standards at the outset. Further details are available from the Housing Corporation website: <http://www.housingcorp.gov.uk/resources/accreditation.htm>
- 7.5 Affordable housing should be fully integrated throughout the development scheme. This should be considered at the very early stages of the design process and should be addressed in development briefs when they are prepared.
- 7.6 Cotswold District Council expects the affordable housing provision to be ‘distributed’ throughout the development, rather than being concentrated all in one location. Small clusters are preferred by the RSLs for keeping management issues under control. In exceptional circumstances, such as flatted development, it may be appropriate to have the affordable housing in one location within the development.
- 7.7 There are many good practice design examples throughout Cotswold District where ‘tenure-blind’ design has been achieved. These include: Corinium Heights in Cirencester and ‘Linden Lea’ in Down Ampney.
- 7.8 The Council have published a ‘Cotswold Design Code’ which is available on the Cotswold District Council website www.cotswold.gov.uk. It illustrates the Cotswold design style, settings harmony and street scene, proportions, simplicity and details, materials and craftsmanship expected in Cotswold District.
- 7.9 Regard should also be given to Government guidance provided in ‘By Design’, and the “Urban Design Compendium”.
- 7.10 Affordable housing should be of sustainable construction, with high standards of insulation and energy efficiency, so that it is affordable to maintain and heat. The use of renewable energy sources is encouraged.
- 7.11 New Affordable Housing will be required to achieve the current standards under the Ecohomes Assessment from the Building Research Establishment (Ecohomes is due to be replaced by the forthcoming “Code for Sustainable Homes” (DCLG)).
- 7.12 Regard should be had to the “Lifetime Home” standards which incorporate design features which help to make them more adaptable to meet the varying needs of different occupiers or a family’s through lifetime occupancy. Further details are available from the Joseph Rowntree Foundation website at www.jrf.org.uk/housingtrust/lifetimehomes
- 7.13 In considering proposals for all new housing development, particular regard shall be paid to community safety and the need to reduce the opportunity for crime to occur.

8. Affordable housing 'exception' sites

- 8.1 National planning guidance enables the provision of affordable housing to be augmented by an 'exception' policy in rural areas. This enables the Council to grant planning permission on land within or adjoining rural settlements of below 3000 population, where residential development would not normally be permitted. The sites that come forward with proposals for affordable housing are termed 'exception sites'.
- 8.2 The location of new housing is a fundamental issue for the Local Plan and a range of policies and proposals are included in the Cotswold District Local Plan 2001-2011 (Adopted April 2006) to address this issue. Those policies and the principles from which they derive equally apply to affordable housing. They include sustainability factors such as accessibility to shops, employment and local services, as well as public transport.
- 8.3 Much of Cotswold District is within an AONB and is an area of development restraint in terms of national and regional housing allocations as supported by Local Plan Policy 19 'Development outside Development Boundaries'. Therefore the majority of any affordable housing that is likely to be provided, will mostly be on previously developed sites in the main market towns and Greenfield extensions at Cirencester and Bourton-on-the-Water.
- 8.4 Affordable Housing provision will also be contributed to by net gains from conversions including net gains from conversion of non-residential premises to residential use; new provision of non self contained household spaces, (hostels and houses in multiple occupation); long term vacant properties brought back into use.
- 8.5 In line with the Rural White Paper (2000), Policy 21 of the Local Plan specifies that planning permission for exception sites may be given for local needs in any town or village, except Cirencester, Tetbury, Moreton-in-Marsh and Bourton-on-the-Water subject to certain strict criteria. These criteria are set out in Appendix A, and are indicated briefly overleaf.
- 8.6 Local needs for the purposes of justifying exception sites, is defined in Policy 21 Note for Guidance 5 as being *'a community's need to provide for those local people who are in need of an affordable home, including locally resident people and those with a local connection. Local means the Parish within which the site is located, together with immediately adjacent parishes. A person with a local connection is someone for whom it is desirable to live in a particular Parish because of family ties or support, because he or she was born and spent their formative years there, or to be near his or her workplace, but is not resident in that Parish.'*
- 8.7 Local Housing Needs Assessment is normally a survey which should be initiated by the local town or parish council, assisted by Gloucestershire Rural Community Council (GRCC). Cotswold District Council however will provide advice on the particular requirements of any settlement or scheme. The assessment will refer to other sources of information such as the Census, the County Housing Needs Study 2005, and the HomeView register.

Assessment criteria for exception sites

- a local needs assessment has been carried out and which shows clearly that there is a local need for type and number of proposed dwellings at the estimated out turn rents
- cross subsidy between open market and affordable housing does not form part of the scheme, unless the open market element meets the requirements of Local Plan Policy 18
- the proposal is small in scale, and the site is within or adjoining the existing built up area
- representations have been made in support of the scheme particularly from the Town or Parish Council or Parish Meeting.
- the affordable housing could not be reasonably be provided elsewhere on a site allocated for residential development, or on a site meeting the criteria set out in Local Plan Policy 18;
- the proposal is subject to conditions or a legal obligation has been entered into to ensure initial and all subsequent occupancy is restricted to members of the local community in need of affordable housing
- the proposal complies with all other policies in the plan including availability of supporting local services (e.g. shop, post employment, office, bus service, etc.) and policies covering Conservation Areas, Listed Buildings etc.

- 8.8 'Small in scale' is of course relative to each settlement. The number of dwellings proposed must be accommodated satisfactorily on site without compromising the form and character of the settlement. The number of dwellings should not exceed the proven need and may, because of landscape and other constraints, result in fewer. Sites should not be remote from existing buildings and not comprise of scattered, isolated development intruding into the open countryside. White Consultants 'Study of Land surrounding key settlements' published June 2000, provides further advice on landscape matters. Advice should also be sought from the District Council's Landscape Officers. Other environmental considerations, including landscape character and biodiversity, should be addressed in development proposals, in accordance with Local Plan Policies.
- 8.9 Sites should be well related to the existing built development, contained within clear boundaries, and should not be overly prominent in the surrounding landscape.
- 8.10 From a housing perspective, the Housing Corporation requires Registered Social Landlords to complete an assessment of sustainability for schemes. Therefore it is unlikely that the RSLs will support proposals for places with very limited services.

9. Protocol for the delivery of affordable housing through planning, in terms of section 106 agreements, what information will be required, whom to contact, and how the Cotswold District Council handles affordable housing matters

Legal Agreements

- 9.1 Affordable Housing will normally be secured by means of a legal agreement under section 106 of the Town and Country Planning Act 1990. These are usually between a local planning authority and developers specifying that a proportion of a development site be reserved for affordable housing. 'S106' agreements run with the land and apply to successive owners. These must be submitted in draft form (ready to sign) with both full and outline applications. Refer to 'Validation Checklists for Planning and Associated Applications' published on the Council's website www.cotswold.gov.uk.
- 9.2 Section 106 agreements will normally specify:
1. The number and type of affordable homes to be included on the site;
 2. The control and management of the housing which will usually be by the transfer of the affordable homes to a registered social landlord and any hand-over arrangements;
 3. The offering of housing at below market prices to initial and subsequent occupiers and the formula used to calculate this;
 4. The occupancy of the housing which will be reserved for people in housing need according to criteria determined by the Council;
 5. The location and phasing of Affordable Housing provision in relation to the development of the site and any trigger points when affordable housing must be provided;
 6. The affordability in rental levels of the affordable housing to be provided for instance in relation to the Housing Corporation target rents.
- 9.3 Standard clauses can help shorten the process of finalising the small print in section 106 agreements which otherwise can lead to protracted negotiations. Inevitably each site will be different, but the standard section 106 agreements most applicable can be applied to the particular development as a starting point for negotiations.
- 9.4 The Council's standard clauses relating to Affordable Housing for Section 106 agreements are provided in Appendix B. A Draft section 106 agreement must be submitted with the development application (full or outline) or the application will be deemed as invalid.
- 9.5 Further background details on the District Council's approach to Planning Obligations is available in the Local Plan, the supporting text and Policy 49 'Planning Obligations and Conditions', and, in due course, from the emerging Protocol for S106 Agreements being prepared by the Council. Refer to planning policies and procedures on the Council's website www.cotswold.gov.uk.

- 9.6 All sums received will be deposited under separate identification within the section 106 Fund Account and while held will earn interest at the rate of not less than the average rate received by the Council in respect of its other deposited funds. The Council will keep all sums separate from its normal revenue and capital accounts but a summary of movements within the fund each year will be published within the Annual Statement of Accounts.
- 9.7 Primary responsibility for securing the completion of section 106 agreements and for enforcing obligations is vested with the Planning (Regulatory) Committee, subject to delegated officer authority.
- 9.8 Management of the Council's Section 106 Affordable Housing Fund is vested in the Council's Section 106 Officer Working Group. Any commitment to funding is subject to Cabinet approval.

Involvement and selection of an RSL partner

- 9.9 The involvement of an RSL registered with the Housing Corporation is by far the most effective way of developing a successful scheme that will ensure that the benefits of affordable housing are secured for the long term. The involvement of an RSL at the beginning of the design process is therefore strongly recommended. A nominated RSL partner as well as the mix and percentage of affordable housing should be included in draft section 106 agreement submitted with outline or full development application.
- 9.10 The Council has carried out a selection process to identify its preferred partner RSLs for new affordable housing development in the District. Appendix C provides details of this process and the partner RSLs selected. The Council has also agreed with its two key partners a pricing policy for affordable housing, details of which, are published in Appendix D.

Protocol for Delivery of Affordable Housing

- 9.11 Appendix E provides a list of contact details for Cotswold District Council. Appendix F sets out a process flow chart which clearly illustrates the likely sequence of stages involved in handling planning applications that require an affordable housing contribution.
- 9.12 Appendix G sets out the guiding principles expected of the RSLs, Developers and Cotswold District Council when handling planning applications that require Affordable Housing and section 106 agreements. Reference should be made in due course to the emerging 'Officer Protocol for the Negotiation and Completion of Section 106 Contributions', currently under preparation.

Monitoring the delivery of Affordable Housing

- 9.13 The delivery of Affordable Housing will be monitored and reported annually in the Cotswold District Council Annual Monitoring Report which is submitted to the Government Office South West each December. The Annual Monitoring Report will be publicly available via the District Council website.

- 9.14 The monitoring information will be used to identify any changes required to Local Plan Policy 21 'Affordable Housing' and the provisions of this SPD to improve delivery of affordable housing. Such changes will be addressed through the review of the SPD and Policy 21 programmed in the Local Development Scheme.
- 9.15 Information will include:
1. Monitoring of Housing Completions by financial year (gross & net); by rent, low cost home ownership as well as i) those wholly funded by RSLs, ii) wholly funded through developer / landowner contribution iii) funded through a mix of public subsidy and developer contribution.
 2. Delivery of Affordable Housing Units through the planning system, by geographical location and by type of dwelling units e.g. flats, houses, and number of bedrooms; as well as provision for older people; and people with special mobility requirements;
 3. The percentage of affordable housing achieved on an open market development.
- 9.16 In addition demand for different types and tenures through the HomeView Housing Register will be also be reviewed to build up a picture of local housing needs by way of housing type and location.
- 9.17 Details of Planning Obligations will be reviewed on a quarterly basis by the Council's Section 106 Officer Working Group through use of the Development Control Uniform Database 'Planning Obligations' module. Where necessary, non-compliance with the terms of the obligation will be reported to the Planning (Regulatory) Committee and where relevant the Council will consider taking enforcement / legal action to ensure Planning Obligations are complied with.
- 9.18 The financial and other contributions towards Affordable Housing from section 106 agreements will also be published in Council's Annual Statement of Accounts.



Appendix A - Cotswold District Local Plan 2001 to 2011 (Adopted, April 2006): Policy 21

POLICY 21: AFFORDABLE HOUSING

1. In order to meet demonstrated needs, a proportion of affordable housing will be sought as part of the development of any significant site in Cirencester, Tetbury, Moreton-in-Marsh, Bourton-on-the-Water and any site elsewhere, whether or not the site is specifically allocated in this Plan. For the purposes of this policy, affordable housing is dwellings for sale or rent at a price level below the going market rate, and which is related to the ability to pay of those identified in a housing survey as being in need.
2. Exceptionally, planning permission may be given for affordable housing to meet local needs in any town or village except Cirencester, Tetbury, Moreton-in-Marsh and Bourton-on-the-Water, having regard to the following criteria:
 - (a) a local needs assessment has been carried out, which shows clearly that there is a local need for the type and number of proposed dwellings at the estimated out-turn prices or rents;
 - (b) the affordable housing could not reasonably be provided as part of a site specifically allocated for residential development, or on a site meeting the criteria set out in Policy 18;
 - (c) the proposal is small in scale and the site is within, or adjoining, the existing built-up area of the settlement ;
 - (d) the proposal is subject to conditions, or a legal obligation has been entered into, to ensure that initial and all subsequent occupancy is restricted to members of the local community in need of affordable housing;
 - (e) cross-subsidy between open market and affordable housing does not form part of the scheme, unless the open market element meets the requirements of Policy 18; and
 - (f) the availability of supporting local services, such as shop, post office and bus service.
3. Wherever affordable housing is provided, it shall be integrated, in terms of its design and layout, in a 'tenure blind' form.

NOTES FOR GUIDANCE:

1. **Proportion of affordable housing:** Where a need is demonstrated, and subject to viability, the Council will seek a maximum contribution of affordable housing, commensurate with identified need:
 - as set out in Appendix 7 (of the Local Plan) and the tables identifying allocated sites; and
 - up to 50% elsewhere.
2. **Affordable housing:** It will be necessary to demonstrate that the housing will be genuinely affordable for the target group that the scheme is intended to help and that it will remain available to those in local need, both initially and in perpetuity. Schemes may be based on a variety of tenures, usually rented or shared ownership. A scheme which offers a simple, one-off percentage discount on market values will not normally be acceptable, unless it could be ensured that the benefits of affordable housing are passed to subsequent purchasers through, for example, a resale covenant scheme or that the housing is for key workers as identified by the District Council.
3. **Key Workers:** The Council will consider key workers as those who are essential to delivering local services.
4. **Significant Sites:** In Cirencester, Tetbury, Moreton-in-Marsh and Bourton-on-the-Water, significant sites are defined as being 0.3 hectares and above or 10 dwellings and above.
5. **Local need:** A community's need to provide for those local people who are in need of an affordable home, including locally resident people and those with a local connection. Local means the parish within which the site is located, together with immediately adjacent parishes. A person with a local connection is someone for whom it is desirable to live in a particular parish because of family ties or support, because he or she was born and spent their formative years there, or to be near his or her workplace, but who is not resident in that parish.
6. **Local Needs Assessment.** Normally, a survey will be required which should be initiated by the local Council, or by the applicant in conjunction with the local Council. The District Council will provide advice on such surveys and has a standard survey form, which can be adapted to meet the particular requirements of any settlement or scheme. For more information on this, contact the District Council's Housing Strategy officers. The assessment should refer to other sources of information, such as the Census, The District Housing Needs Assessment 2004 and the Council's Joint Housing Register. In addition to the assessment showing the need for the proposed dwellings, the Council will also normally expect to receive local representations in support of the scheme, particularly from the Town or Parish Council or the Parish Meeting.
7. **Small in scale:** Scale is relative to each settlement. The number of dwellings proposed must be able to be accommodated satisfactorily on the site without compromising the form and character of the settlement. A local housing needs survey or assessment should clearly indicate a need. The number of dwellings allowed should not exceed the proven local need and may, because of constraints, result in fewer.
8. **Environmental and other planning considerations:** By their nature, 'off-plan' sites are not normally considered suitable for residential development. Affordable housing sites in such locations may only be allowed as special exceptions, although environmental and other planning considerations will still apply. Sites in sensitive environmental areas, such as the AONB and Conservation Areas, will require appropriate architectural standards. Planning permission will not be given for affordable housing within those Policy Areas allocated for non-housing uses, such as employment.
9. **Sufficient information:** A full application may be necessary to enable the Council to assess the environmental implications and suitability for those in local need. A financial appraisal may also be necessary for the Council to assess the scheme's affordability to those in need.
10. **Benefits enjoyed by initial and subsequent occupiers:** Normally, this has been achieved by involving a Registered Social Landlord, with applicants advised to contact such an organisation.
11. **Supplementary Planning Document:** Details of the Council's requirements for affordable housing are set out in the Affordable Housing SPD.

Appendix B – Standard clauses for Section 106 Agreements

The Council will normally expect a developer of a residential development site subject to the Council's affordable housing planning policy to deliver the affordable housing on the subject site.

Therefore, the Council's standard clauses for Section 106 Agreements governing the provision of affordable housing are sub-divided into those relevant to two forms of transaction between the developer and an appointed Registered Social Landlord (RSL):

- (i) where the developer constructs the affordable homes and transfers the completed homes to the RSL,
- (ii) where the developer transfers serviced affordable housing land to the RSL and pays a commuted sum to the Council.

There can be exceptional circumstances where it is impractical or inappropriate for the affordable housing to be provided on the subject site. In such cases the developer will be required to make a financial contribution.

Therefore, this appendix also includes the Council's standard clauses for a Section 106 Agreement governing the payment of a financial contribution by a developer in lieu of providing affordable housing.

I. General Clauses

- I.1 Affordable housing should only be used to provide accommodation for households who are in need of such housing in the Council's administrative area and whose needs meet the criteria of the appointed RSL.
- I.2 People who have a need for affordable housing in the Council's administrative area will be people with a local connection, which means they:
 - or their partners will have had their only or principal home, continuously for the past 3 years, in the parish where the subject site is situated, or in the surrounding area or in the Cotswold District,
 - previously had their only or principal home in the parish, surrounding area or in the Cotswold District for a continuous period of 5 years,
 - or their partners will have had their principal place of work in the parish, surrounding area or Cotswold District for the past 12 months,
 - have a member of their immediate family living in the parish, surrounding area or Cotswold District and have had for a continuous period of 5 years.
 - In the opinion of the Council need to live within the parish or surrounding area in order to perform employment which provides a benefit to the economy or social well-being of the community.
- I.3 Need for affordable housing will be defined in accordance with the application criteria for the Council's Housing Register as well as to the criteria applied by the appointed RSL.

- 1.4 The affordable homes should be designed and constructed to meet or preferably exceed the minimum standards specified by The Housing Corporation in its 'Scheme Development Standards' (or the "Design and Quality Standards", which will supersede the SDS) and related Eco Homes (or "Code for Sustainable Homes" which will replace Eco Homes) Standard expectations applying at the date of the Section 106 Agreement, or in force 12 months prior to the development commencing, whichever is the later date.
- 1.5 The obligations in relation to affordable housing shall not bind a mortgagee of the appointed RSL, or any successor, in the event that it becomes a mortgagee in possession, except in so far as the mortgagee in possession will be expected to use its reasonable endeavours to dispose of or transfer the affordable housing to another RSL.
- 1.6 Affordable housing will be excluded from any Voluntary Purchase Grant or any right to acquire except in the exceptional circumstance where public subsidy is required to contribute to the funding of the affordable housing.
- 1.7 The Council will require any RSL appointed to take transfer or to produce affordable housing as the result of an obligation on a landowner or developer under a Section 106 Agreement to reinvest any net capital receipts from future releases of equity in this housing. Reinvestment should be in the provision of other affordable housing in the Parish, Surrounding Area or District. The net receipt will be the amount received after deduction of legal and other costs reasonably incurred in connection with the transaction which released the equity and any sums to be repaid to a grant or mortgage provider.

2. Clauses Relevant Where the Developer Constructs the Affordable Homes and Transfers them to the Appointed RSL

- 2.1 Before commencing any element of the development the developer should:
- obtain the Council's approval of the programme, location, type, mix and servicing of the affordable housing, in the context of the programme and servicing of the rest of the development and in the context of the Council's published planning policies on tenure mix and minimum dwelling sizes.
 - agree an unconditional contract with the appointed RSL for the transfer of the completed affordable homes at a price derived from the Council's current Affordable Housing Pricing Policy as set out in Appendix D.
- 2.2 The Council will select an RSL from amongst its preferred partner RSLs which will be willing and able to acquire the affordable housing, subject to the affordable homes fulfilling the expectations of the Section 106 Agreement. If the selected RSL does not act reasonably in negotiating a transfer agreement with the developer, the Council will intervene and ultimately may choose to select another of its preferred partner RSLs if it believes the RSL first selected is not able to achieve a reasonable basis or timescale for agreement with the developer.
- 2.3 The developer will agree not to occupy or permit occupation of any of the homes in the development which are to be sold or let on the open market until the developer has transferred the completed affordable homes to the appointed RSL.
- 2.4 The completed affordable homes should be transferred to the appointed RSL freehold, in the case of houses, or on a lease for a minimum of 125 years, in the case of individual flats or apartments. Where it is proposed to transfer a complete block of flats or apartments to an RSL then the freehold should be transferred.

2.5 Completion of the affordable homes will not have been achieved unless all services are connected and operating and the homes are accessible by both vehicles and pedestrians.

3. Clauses Relevant Where the Developer Transfers Serviced Affordable Housing Land to the Appointed RSL and Pays a Commuted Sum to the Council

3.1 Before commencing any element of the development the developer should:

- obtain the Council's approval of the programme, location, type, mix and servicing of the affordable housing, in the context of the programme and servicing of the rest of the development, and identify the exact land area to be subject to transfer,
- agree an unconditional contract with the appointed RSL for the freehold transfer, or an interest equivalent to that held by the developer, of all of the land identified for affordable housing provision,
- pay to the Council a sum for the provision of the affordable housing based on an estimate produced by a qualified and experienced quantity surveyor of the amalgamated cost of producing all of the affordable housing less the aggregated amounts which an RSL is expected to pay for affordable housing, for the mix applying to the site, published in the Council's Affordable Housing Pricing Policy.

3.2 Before completing the transfer of the affordable housing land to the appointed RSL, the developer will have constructed and installed the roads, sewers and other services necessary to permit the affordable housing to be constructed and completed properly.

3.3 The Council will undertake to apply the commuted sum paid by the developer to providing financial assistance to the appointed RSL to enable the provision of the affordable housing on the subject site.

3.4 The Council will select an RSL from amongst its preferred partner RSLs which will be willing and able to acquire the affordable housing land and to provide the agreed affordable housing in accordance with reasonable programme expectations. If the selected RSL does not act reasonably in negotiating a transfer agreement with the developer, the Council will intervene and ultimately may choose to select another of its preferred partner RSL if it believes the RSL first selected is not able to achieve a reasonable basis or timescale for agreements with the developer.

4. Clauses Relevant to Off-Site Contributions by the Developer (exceptional circumstances only)

4.1 Before commencing development, the developer should pay to the Council a sum to facilitate the provision of affordable housing elsewhere than on the subject site. The sum will be calculated based on a notional quantity and mix of affordable housing reflective of that which would have been expected from the subject site had an on site contribution been practical or appropriate.

4.2 The calculation of the sum will be completed by establishing the cost of acquiring land and then constructing the notional mix of housing in the local housing market or acquiring satisfactory existing dwellings using estimates of prices provided by appropriately qualified advisors. From this amount will be deducted the amounts which can be paid for affordable housing by RSLs as published in the Council's Affordable Housing Pricing Policy. The product is the sum to be paid by the developer.

4.3 The Council will use the sum paid by the developer to facilitate the provision of affordable housing in its administrative area. In the event that all or part of the payment has not been spent for this purpose within 5 years of its receipt, the Council will repay that amount to the developer, with interest.

Standard Section 106 Agreement I:

**Developer Constructs the Affordable Houses
and Transfers them to Appointed Registered
Social Landlords**

THIS PLANNING AGREEMENT is made the _____ day of

Two thousand and

BETWEEN:-

(1) COTSWOLD DISTRICT COUNCIL of Trinity Road Cirencester
Gloucestershire GL7 1PX (“the Council”) and

(2)

whose registered office is situate at _____ (“the Owner”)

(3)

_____ (“the Mortgagee”)

WHEREAS:

(1) The Council is the Local Planning Authority for the purposes of the Act for the
District of Cotswold in the County of Gloucester

(2) The Owner is the registered proprietor at the Land Registry with freehold title
absolute under Title Number GR _____ of the Land

(3) On the _____ the Owner submitted the Planning
Application to the Council for the Development

(4) The Owner is willing to enter into this Agreement with the Council in the
terms and subject to the conditions hereinafter appearing

(5) The Council is willing to grant the Planning Permission for the Development
provided the Owner covenants in the manner hereinafter provided

NOW THIS DEED WITNESSES AND IT IS HEREBY AGREED BETWEEN THE
PARTIES as follows:-

1. DEFINITIONS

In this Planning Agreement the following words and expressions shall where the
context so requires or admits have the following meaning:

- 1.1 “the Act” means the Town and Country Planning Act 1990 as amended or any other statutory re-enactment or amendment thereto
- 1.2 “Affordable Housing Units” means housing irrespective of tenure or financial arrangements the design and specification of such housing to comply with the Housing Corporation’s current essential Scheme Development Standards (or the Housing Corporation’s Design and Quality Standards or any superseding standards set by the Housing Corporation) in force at the date of this Agreement or 12 months before the date of the commencement of construction whichever is the later and “Affordable Housing Unit” shall be construed accordingly
- 1.3 “the Appointed RSL” means a Registered Social Landlord appointed from the Council’s preferred partner RSL’s which is willing and able to acquire the Affordable Housing Unit at the Price
- 1.4 “the Council” shall include its successors in title
- 1.5 “the Development” means the development described in the Planning Application
- 1.6 “the Land” means the land at
shown for the purposes of identification
only edged red on Plan

1.7 “the Local Connection”

means (not in order of priority):

(a) persons who have or persons whose partners have for a continuous period of three years immediately prior to their occupation of an Affordable Housing Unit had their only or principal home in the Parish or in the Surrounding Area or in the Cotswold District

(b) persons who have or persons whose partners have previously had their only or principal home in the Parish or in the Surrounding Area or in the Cotswold District for a continuous period of five years

(c) persons who have or whose partners have for a period of twelve months immediately prior to their occupation of an Affordable Housing Unit had their principal place of work in the Parish or in the Surrounding Area or in the Cotswold District

(d) persons who have had or persons whose partners have had immediately prior to their occupation of an Affordable Housing Unit one or more of their parents grandparents children or siblings living within the Parish or in the Surrounding Area or in the Cotswold District for a continuous period of five years

- (e) person who in the opinion of the Council need to live within the Parish or Surrounding Area in order to perform employment which provides a benefit to the economy or social well-being of the community
- 1.8 “the Owner” shall include its successors in title
- 1.9 “the Parish” means the parish of
- 1.10 “Plan” the Plan attached to this Agreement
- 1.11 “the Planning Application” means the (outline)/ full application dated the and submitted by the Owner to the Council under reference number CT. for the erection of houses of which being plots numbered shall be Affordable Housing Units
- 1.12 “the Planning Permission” means the planning permission in the form of draft annexed hereto for the Development pursuant to the Planning Application
- 1.13 “the Price” means the sum to be paid by the Appointed RSL to the Owner for the Affordable Housing Units by reference to the Council’s Affordable Housing Pricing Policy as reviewed from time

to time

1.14 “the Qualifying Criteria” means where a person is in housing need such need to be defined in accordance with the application criteria for the Council’s Housing Register and the criteria applied by the Appointed Registered Social Landlord

1.15 “Registered Social Landlord” means a Housing Association or other non-profit making body either of which is registered with the Housing Corporation as a social landlord

1.16 “the Surrounding Area” means the parishes of

2. STATUTORY PROVISIONS

2.1 This Agreement is entered into pursuant to Section 106 of the Act and S111 of Local Government Act 1972 and the relevant clauses herein shall be deemed to be planning obligations (“Planning Obligations”) in respect of the Land for the purposes of those sections but without prejudice to all or any other means of enforcing them at law in equity or by statute and shall be registered as a local land charge

2.2 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or any other powers vested in the Council under the statute byelaw statutory instruments orders and regulations (already or in the future to be passed) or any government department public or competent authority or Court of competent jurisdiction

2.3 No failure or delay by the Council to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right power or remedy by the Council

2.4 If the Council requires to carry out all or any part of the Planning Obligations the Owner irrevocably authorises the Council and anyone appointed on its behalf (on giving reasonable notice except in cases of emergency) to enter any part of the Land reasonably required for that purpose

2.5 The Owner warrants that it has power to carry out the Planning Obligations and the Development

2.6 The Owner confirms that apart from the parties to this Agreement there are no other persons with any interest (legal or equitable) in the Land or any part thereof

2.7 Until the Planning Obligations enforceable by the Council have been complied with the Owner will furnish the Council with full details (including a plan if appropriate) of any conveyance transfer lease assignment mortgage or other disposition of all or any part of the Land including the name and address of the person to whom the disposition was made and the nature and extent of the interest disposed of to them within fourteen days of such disposal SAVE THAT in the event of a disposition of any individual dwelling comprising part of the Development this obligation will apply only if the information is specifically requested by the Council

2.8 The Owner shall give to the Council seven days written notice of his intention to commence development and shall confirm in writing within seven days following commencement that development has commenced PROVIDED THAT failure to provide either of the said notifications shall not render this Agreement inoperative

2.9 If any individual clause sub-clause or schedule in this Agreement is subsequently held to be unenforceable by a Court the parties agree that the offending

clause sub-clause or schedule shall cease to be binding and will be severed from the Agreement PROVIDED THAT the severing of such a clause sub-clause or schedule shall not affect the continuing enforceability of the remainder of the Agreement

2.10 The Owner shall pay to the Council its proper and reasonable legal costs incurred in connection with this Agreement

2.11 If the Planning Permission expires without commencement of the Development or is quashed revoked or otherwise withdrawn by any statutory procedure without the consent of the Developer this Deed shall cease to have effect

3. ENFORCING AUTHORITY

The Council is the Local Planning Authority for the purposes of Section 1(b) of the Act by which the covenants and obligations created by this Agreement are enforceable

4. CONDITIONS

Clause 5 and the Schedule(s) to this Agreement are strictly conditional upon the commencement of works as defined by S56(4) of the Act for the construction of a dwelling pursuant to the Planning Permission

5. OBLIGATION

Subject to the provisions of this Agreement the Owner hereby covenants with the Council in the terms of the Schedule

6. REVOCATION

This Agreement shall cease to have any force and effect in respect of any then outstanding obligations in the event of the Planning Permission being revoked withdrawn or relinquished

7. LIABILITY

7.1 No person or body shall be liable for any breach of this Agreement unless they hold any interest in that part of the Land in respect of which such breach occurs or held such an interest at the date of the breach

8. NOTICES

8.1 Any notice or consent required to be given or permitted under this Agreement shall be in writing and shall be sent by pre-paid first class registered post hand delivery or facsimile transmission. There shall be no right to serve such notices by e mail but if a party chooses to do so (and the receiving party agrees) e mail may be used

8.2 The address for service of any such notice or consent shall be the addresses given in the definition of the parties hereto or such other address for service as shall have been previously notified in writing to the other party

8.3 A notice or consent under this Agreement shall be deemed to have been served as follows:

8.3.1 if personally delivered at the time of delivery

8.3.2 if posted on the first working day after the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom

8.3.3 if sent by facsimile transmission or e mail at the time of successful transmission

and in proving service it shall be sufficient to prove that the envelope containing such notice or consent was properly addressed and delivered or posted to the addresses specified in Clause 8.2 of this Agreement or that the facsimile or e mail was properly

addressed and transmitted to the numbers or addresses specified in Clause 8.2 of this Agreement

9. ARBITRATION

9.1 Any party to any dispute or difference may apply for the appointment of an umpire in accordance with clause 9.2 hereof whenever it thinks fit after such dispute or difference shall have arisen

9.2 Any dispute or difference arising between the parties hereto with regard to their respective rights and obligations as to any matter in any way arising out of or connected with this Agreement shall except as otherwise provided be referred to the decision of a single arbitrator being a Chartered Surveyor of not less than 10 years relevant qualified experience in the relevant matter to be agreed between the parties (whose decision shall be final and binding on both parties) to be agreed by the parties or failing agreement between them to be nominated on the application of either party by the President for the time being of the Royal Institution of Chartered Surveyors or such other institution should the parties so agree as the case may be and such reference shall be deemed to be submission to arbitration within the meaning of the Arbitration Act 1996

10. REGISTRATION

The Owner acknowledges that this Agreement will be registered as a local land charge in the Register of Local Land Charges maintained by the Council

11. WAIVER

The Council may waive or release all or any parts of the obligations or restrictions contained in this Agreement given by the Owner to the Council in respect of all or any part of the Land without having to obtain the consent of any of the owners from time to time of any part of the Land except for the part thereof in respect of which the

variation waiver or release is made PROVIDED THAT such variation waiver or release shall not impose any additional obligations or restrictions on any other part of the Land or on any owner or occupier thereof who shall not have given his consent

12. INTERPRETATION

In this Planning Agreement:

- 12.1 words importing the masculine gender include the feminine and the neuter and vice versa
- 12.2 words importing the singular include the plural and vice versa
- 12.3 references to persons include bodies corporate and vice versa
- 12.4 save where the context otherwise requires all obligations given or undertaken by more than one person in the same capacity are given or undertaken by them jointly and severally so as to apply and be enforceable against all both or any of such persons and their and each of their personal representatives
- 12.5 the clause headings shall not affect the construction of this Agreement
- 12.6 save where otherwise stated any reference to a numbered clause or schedule means the clause or schedule in this Agreement which is so numbered
- 12.7 every reference to any statute or any section of any statute shall be read and construed as including a reference to any statutory amendment modification or re-enactment thereof for the time being in force and to every instrument order direction regulation bye-law permission licence consent condition scheme or other such matter made in pursuance of such statute

13 APPOINTMENT OF REGISTERED SOCIAL LANDLORD

In the event of the Council (acting reasonably) considering that the Appointed RSL is unreasonably delaying or not using proper or sufficient endeavours to secure a binding contract with the Owner for the purchase of the Affordable Housing Units the

Council shall be at liberty to serve notice in writing on the Appointed RSL (Initial Notice) requiring it to (unconditionally) exchange contracts with the Owner within 28 days of such notice in default of which and for a period of 7 days thereafter the Council shall be entitled to withdraw in writing its approval of the Appointed RSL (Final Notice) and immediately thereafter appoint an alternative Appointed RSL from amongst the Council's preferred partner RSLs. In the event of the Council not serving the Final Notice in accordance with the provisions of this clause the Council shall not be entitled to seek withdrawal of its approval of the Appointed RSL other than by re-serving an Initial Notice .

13.1 For the avoidance of doubt the Owner shall only be entitled to dispose of the Affordable Housing Units to an Appointed RSL .

14. The Development shall be deemed to be commenced on the date on which any material operation as defined by Section 56(4) of the Act is carried out pursuant to the Planning Permission

15. None of the provisions of this Agreement relating to any of the Affordable Housing Units shall be binding upon a mortgagee in possession of one or more of the Affordable Housing Units which said mortgagee in possession may sell and dispose of any Affordable Housing Unit free from the terms of the this Agreement and upon such sale as aforesaid this Agreement shall become null and void in respect of that Affordable Housing Unit and nor shall the terms of this Agreement be binding upon any receiver appointed by such mortgagee in possession of any Affordable Housing Unit SUBJECT TO the said mortgagee in possession first using its reasonable endeavours to sell and transfer the Affordable Housing Unit to an alternative Registered Social Landlord first approved in writing by the Council's Director of Corporate and Community Development such approval not to be unreasonably

withheld or delayed PROVIDED ALSO that the said mortgagee shall not be obliged to sell or convey to an alternative Registered Social Landlord under this clause for a consideration less than that which the mortgagee requires to redeem its borrowing upon the Affordable Housing Unit or that which the mortgagee could obtain on the open market whichever is the lesser

16. The Owner shall immediately notify the Council's Director of Corporate and Community Development in writing within seven days of any breach (or receipt of notice of any alleged breach) of any term contained in any mortgage or legal charge of all or any of the Affordable Housing Units affecting the Land

17. THIRD PARTIES

17.1 Nothing in this Agreement confers any right on any third party to enforce any of the obligations rights or covenants on the part of (the Council) (Owner) under this Agreement whether in accordance with the Contracts (Rights of Third Parties) Act 1999 or otherwise (save for the purposes of this clause 17 any individual house or flat buyer or occupier who shall buy or occupy a dwelling)

IN WITNESS whereof the parties hereto have set their hands or caused their Common Seals to be hereunto affixed the day and year first before written

THE SCHEDULE
(Planning Obligations)

THE SCHEDULE

Part I

Covenants by the Owner

1. Affordable Housing
 - 1.1 Of the houses permitted by the Planning Permission for erection upon the Land shall be houses for sale on the open market (“Non Affordable Housing”) and shall be Affordable Housing Units.

Of the Affordable Housing Units:-

 - shall be one bedroom 2 persons flats of not less than 45 sq metres;
 - shall be two bedroom 3 persons flats of not less than 55 sq metres;
 - shall be two bedroom 3 persons bungalows of not less than 65 sq metres;
 - shall be two bedroom 4 persons houses of not less than 75 sq metres;
 - shall be three bedroom 5 persons houses of not less than 85 sq metres;
 - shall be four bedroom 6 persons houses of not less than 95 sq metres;

PROVIDED THAT the location tenure mix size cost standard and level of servicing shall be in accordance with the Council’s Affordable Housing – Supplementary Planning Document
 - 1.2 Not to commence the Development until a programme and timetable for the provision of the Affordable Housing Units and the location tenure size cost standard and level of servicing of the same has been submitted to and approved by the Council in writing
 - 1.3 The Owner shall not occupy or allow (more than) any of the Non Affordable Housing Units to be occupied until of the Affordable

Housing Units have been constructed (and for the avoidance of doubt construction of the Affordable Housing Units shall not be achieved unless all the services are connected and operating and the Affordable Housing Units are accessible by both vehicles and pedestrians) and they are ready for occupation by a person or persons satisfying the Qualifying Criteria

- 1.4 Upon completion of the construction of the Affordable Housing Units in accordance with Clause 1.3 above the Owner shall transfer the Affordable Housing Units to the Appointed RSL an interest equivalent to that owned by the Owner. For the avoidance of doubt this shall be construed as a transfer of a freehold interest in the case of a house or a term of years certain of at least 125 years in the case of flats and apartments
2. The Owner shall not later than 3 months after the date of this Agreement serve notice in writing on the Council that they require the Council to appoint the Appointed RSL
 - 2.1 Upon the Council confirming in writing to the Owner the identity to the Appointed RSL the Owner shall exchange contracts with the RSL for the purchase of the affordable housing units at the Price within 2 months of such notice in default of which the Council shall be at liberty to recalculate the Price
 - 2.2 The Owner shall not commence the Development until such time as it has exchanged contracts with the Appointed RSL for the purchase of the Affordable Housing Units at the Price and produced to the Solicitor to the Council a certified copy of the contract and memorandum of exchange.
 - 2.3 In the event of a first disposal of any Affordable Housing Unit to an individual meeting the Qualifying Criteria or to any other individual body of persons

group or association approved by the Council then any future disposals thereof (be they by way of sale lease or other means of disposal) shall also:

(a) be to an individual meeting the Qualifying Criteria or such other prospective purchaser to which the Council has given prior approval (such approval not to be unreasonably withheld or delayed)

(b) in perpetuity so as to ensure that the Affordable Housing Units remain as such but for the avoidance of doubt this provision shall not apply to any disposal by a Registered Social Landlord

2.4 In the event of a disposal of an Affordable Housing Unit by the owner of the Affordable Housing Unit the owner shall provide to the Council details of such disposal within seven days of the same

Details to include:-

- (1) the relevant Local Connection
- (2) the identity of the Affordable Housing Unit
- (3) the terms of the disposal including the current rent

2.5 No Affordable Housing Unit being the subject of Clause 3.4 shall be occupied unless and until a disposal thereof meeting the criteria under this Clause 3 has taken place

2.6 The Owner shall in any Transfer document to the appointed Registered Social Landlord require a covenant obliging the Registered Social Landlord to reinvest any net capital receipts (for the avoidance of doubt net receipt shall be the amount received by the Registered Social Landlord after deduction of all legal and other costs reasonably incurred in connection with the transaction that release the equity and any sums to be repaid to a grant or mortgage provider) from future release of equity in the Affordable Housing Units such

reinvestment shall be in the provision of other affordable housing in the Parish

Surrounding Area or the Cotswold District

THE COMMON SEAL of COTSWOLD)

DISTRICT COUNCIL was hereunto)

affixed in the presence of:-)

Solicitor to the Council

THE COMMON SEAL of

was hereunto affixed in the presence of:-)

Director

Secretary

THE COMMON SEAL of)

was hereunto affixed in the presence of:-)

Authorised Signatory

Authorised Signatory

DATED

200

COTSWOLD DISTRICT COUNCIL

-and-

-and-

PLANNING AGREEMENT

(By Agreement)

Under Section 106 of the Town and Country
Planning Act 1990 relating to

Gloucestershire

Standard Section 106 Agreement 2:

**Transfer of Serviced Affordable Housing Land
and Payment of the Commuted Sum**

THIS AGREEMENT is made the _____ day of

Two thousand and

BETWEEN:-

(1) COTSWOLD DISTRICT COUNCIL of Trinity Road Cirencester
Gloucestershire GL7 1PX (“the Council”) and

(2) _____ whose registered office is situate at _____
_____ (“the Owner”)

(3) _____ (“the Mortgagee”)

WHEREAS

(1) The Council is the Local Planning Authority for the purposes of the Act for the
District of Cotswold in the County of Gloucester

(2) The Owner is the registered proprietor at the Land Registry with freehold title
absolute under Title Number _____ of the Land

(3) The Mortgagee is the mortgagee of the Land under a legal charge

(4) It is intended that the Owner transfers the Serviced Land to the Appointed
RSL

(5) On the _____ the Owner submitted the Planning Application to the
Council for the Development

(6) The Owner is willing to enter into this Agreement with the Council on the
terms and subject to the conditions hereinafter appearing

(7) The Council is willing to grant the Planning Permission for the Development
provided the Owner covenants in the manner hereinafter appearing

NOW THIS DEED WITNESSES AND IT IS HEREBY AGREED BETWEEN THE
PARTIES as follows:-

1. DEFINITIONS

In this Agreement the following words and expressions shall where the context so requires or admits have the following meaning:

1.1 “the Act” means the Town and Country Planning Act 1990 or any other statutory re-enactment or amendment thereto

1.2 “Affordable Housing Units” means housing to be constructed on the Serviced Land irrespective of tenure ownership or financial arrangements the design and specification of such housing to meet the requirements of a Registered Social Landlord and complying with the Housing Corporation’s current essential Scheme Development Standards (or the Housing Corporation’s Design and Quality Standards or any superseding standards set by the Housing Corporation) in force at the date of this Agreement or 12 months before the date of the commencement of construction whichever is the later and “Affordable Housing Unit” shall be construed accordingly

1.3 “the Appointed RSL” means a Registered Social Landlord appointed from the Council preferred partner RSL which is willing and able to acquire the Affordable Housing Units

- 1.4 “the Council” shall include its successors in title
- 1.5 “the Commuted Sum” means an estimated sum (at the date of the Agreement) of the amalgamated development costs of producing the Affordable Housing Unit for disposal (as agreed between the parties) LESS the aggregated amounts which an RSL would pay for the acquisition of the Affordable Housing Units by reference to the matrix produced by the Council’s Affordable Housing Pricing Policy
- 1.6 “the Development” means the development described in the Planning Application
- 1.7 “the Local Connection” means (not in order of priority):
- (a) persons who have or persons whose partners have for a continuous period of three years immediately prior to their occupation of an Affordable Housing Unit had their only or principal home in the Parish or in the Surrounding Area or in the Cotswold District
 - (b) persons who have or persons whose partners have previously had their only or principal home in the Parish or in the Surrounding Area or in the Cotswold District for a continuous period of five years
 - (c) persons who have or whose partners

have for a period of twelve months immediately prior to their occupation of an Affordable Housing Unit had their principal place of work in the Parish or in the Surrounding Area or in the Cotswold District

(d) persons who have had or persons whose partners have had immediately prior to their occupation of an Affordable Housing Unit one or more of their parents grandparents children or siblings living within the Parish or in the Surrounding Area or in the Cotswold District for a continuous period of five years

(e) person who in the opinion of the Council need to live within the Parish or Surrounding Area in order to perform employment which provides a benefit to the economy or social well-being of the community

- 1.8 “the Owner” shall include its successors in title
- 1.9 “the Parish” means the parish of
- 1.10 “Plan” the Plan attached to this Agreement
- 1.11 “the Planning Application” means the (outline)/ full application dated the
and submitted by
the Owner to the Council under reference

number CT. for the erection of
houses of which being plots numbered
shall be Affordable Housing
Units

1.12 “the Planning Permission” means the grant of planning permission in the form of draft annexed hereto for the Development pursuant to the Planning Application

1.13 “the Qualifying Criteria” means where a person is in housing need such need to be defined in accordance with the application criteria for the Council’s Housing Register and the criteria applied by the Appointed Registered Social Landlord

1.14 “Registered Social Landlord” means a Housing Association or other non-profit making body either of which is registered with the Housing Corporation as a social landlord

1.15 “the Serviced Land” means the Land with the benefit of all mains services including gas water electricity sewerage and telephone services to the Affordable Housing Units including sufficient vehicular and pedestrian access to the Affordable Housing Units which shall mean footways and carriageways to serve each Affordable Housing Unit will be fully

constructed to the Highway Authority's adoptable standards at the time of the transfer of the relevant Affordable Housing Unit and that each Affordable Housing Unit is free from any form of contamination so that it can be fully utilised which means the Affordable Housing Units shall not contain contaminated substances protected species or archaeological remains and all such services shall meet the full requirements of regulatory and statutory undertakers

2. STATUTORY PROVISIONS

2.1 This Agreement is entered into pursuant to Section 106 of the Act and S111 of Local Government Act 1972 and the relevant clauses herein shall be deemed to be planning obligations ("Planning Obligations") in respect of the Land for the purposes of those sections but without prejudice to all or any other means of enforcing them at law in equity or by statute and shall be registered as a local land charge

2.2 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or any other powers vested in the Council under the statute byelaw statutory instruments order and regulations (already or in the future to be passed) or any government department public or competent authority or Court of competent jurisdiction

2.3 No failure or delay by the Council to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right power or remedy by the Council

2.4 If the Council requires to carry out all or any part of the Planning Obligations the Owner irrevocably authorises the Council and anyone appointed on its behalf (on giving reasonable notice except in cases of emergency) to enter any part of the Land reasonably required for that purpose

2.5 The Owner warrants that it has power to carry out the Planning Obligations and the Development

2.6 The Owner confirms that apart from the parties to this Agreement there are no other persons with an interest (legal or equitable) in the Land or any part thereof

2.7 Until the Planning Obligations enforceable by the Council have been complied with the Owner will furnish the Council with full details (including a plan if appropriate) of any conveyance transfer lease assignment mortgage or other disposition of all or any part of the Land including the name and address of the person to whom the disposition was made and the nature and extent of the interest disposed of to them within fourteen days of such disposal SAVE THAT in the event of a disposition of any individual dwelling comprising part of the Development this obligation will apply only if the information is specifically requested by the Council

2.8 The Owner shall give to the Council seven days written notice of his intention to commence development and shall confirm in writing within seven days following commencement that development has commenced PROVIDED THAT failure to provide either of the said notifications shall not render this Agreement inoperative

2.9 If any individual clause sub-clause or schedule in this Agreement is subsequently held to be unenforceable by a Court the parties agree that the offending clause sub-clause or schedule shall cease to be binding and will be severed from the Agreement PROVIDED THAT the severing of such a clause sub-clause or schedule shall not affect the continuing enforceability of the remainder of the Agreement

2.10 The Owner shall pay to the Council its proper and reasonable legal costs incurred in connection with this Agreement

2.11 If the Planning Permission expires without commencement of the Development or is quashed revoked or otherwise withdrawn by any statutory procedure without the consent of the Developer this Deed shall cease to have effect

3. ENFORCING AUTHORITY

The Council is the Local Planning Authority for the purposes of Section 1(b) of the Act by which the covenants and obligations created by this Agreement are enforceable

4. CONDITIONS

Clause 5 and the Schedule(s) to this Agreement are strictly conditional upon the commencement of works as defined by S56(4) of the Act for the construction of a dwelling pursuant to the Planning Permission

5. OBLIGATION

Subject to the provisions of this Agreement the Owner hereby covenants with the Council in the terms of the Schedule

6. REVOCATION

This Agreement shall cease to have any force and effect in respect of any then outstanding obligations in the event of the Planning Permission being revoked withdrawn or relinquished

7. LIABILITY

No person or body shall be liable for any breach of this Agreement unless they hold any interest in that part of the land in respect of which such breach occurs or held such an interest at the date of the breach

8. NOTICES

- 8.1 Any notice or consent required to be given under this Agreement shall be in writing and shall be sent by pre-paid first class registered post or hand delivery or facsimile transmission. There shall be no right to serve such notices by e mail but if a party chooses to do so (and the receiving party agrees) e mail may be used
- 8.2 The address for service of any such notice or consent shall be the addresses given in the definition of the parties hereto or such other address for service as shall have been previously notified in writing to the other party
- 8.3 A notice or consent under this Agreement shall be deemed to have been served as follows:
- 8.3.1 if personally delivered at the time of delivery
 - 8.3.2 if posted on the first working day after the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom
 - 8.3.3 if sent by facsimile transmission or e mail at the time of successful transmission

and in proving service it shall be sufficient to prove that the envelope containing such notice or consent was properly addressed and delivered or posted to the addresses specified in Clause 8.2 of this Agreement or that the facsimile or e mail was properly addressed and transmitted to the numbers or addresses specified in Clause 8.2 of this Agreement

9. ARBITRATION

- 9.1 Any party to any dispute or difference may apply for the appointment of an umpire in accordance with clause 9.2 hereof whenever it thinks fit after such dispute or difference shall have arisen

9.2 Any dispute or difference arising between the parties hereto with regard to their respective rights and obligations as to any matter in any way arising out of or connected with this Agreement shall except as otherwise provided be referred to the decision of a single arbitrator being a Chartered Surveyor or Quantity Surveyor (as the case may be) of not less than 10 years relevant qualified experience in the relevant matter to be agreed between the parties (whose decision shall be final and binding on both parties) to be agreed by the parties or failing agreement between them to be nominated on the application of either party by the President for the time being of the Royal Institution of Chartered Surveyors or such other institution should the parties so agree as the case may be and such reference shall be deemed to be submission to arbitration within the meaning of the Arbitration Act 1996

10. REGISTRATION

The Owner acknowledges that this Agreement will be registered as a local land charge in the Register of Local Land Charges maintained by the Council

11. WAIVER

The Council may waive or release all or any parts of the obligations or restrictions contained in this Agreement given by the Owner to the Council in respect of all or any part of the Land without having to obtain the consent of any of the owners from time to time of any part of the Land except for the part thereof in respect of which the variation waiver or release is made PROVIDED THAT such variation waiver or release shall not impose any additional obligations or restrictions on any other part of the Land or on any owner or occupier thereof who shall not have given his consent

12. INTERPRETATION

In this Planning Agreement:

- 12.1 words importing the masculine gender include the feminine and the neuter and vice versa
- 12.2 words importing the singular include the plural and vice versa
- 12.3 references to persons include bodies corporate and vice versa
- 12.4 save where the context otherwise requires all obligations given or undertaken by more than one person in the same capacity are given or undertaken by them jointly and severally so as to apply and be enforceable against all both or any of such persons and their and each of their personal representatives
- 12.5 the clause headings shall not affect the construction of this Agreement
- 12.6 save where otherwise stated any reference to a numbered clause or schedule means the clause or schedule in this Agreement which is so numbered
- 12.7 every reference to any statute or any section of any statute shall be read and construed as including a reference to any statutory amendment modification or re-enactment thereof for the time being in force and to every instrument order direction regulation bye-law permission licence consent condition scheme or other such matter made in pursuance of such statute

13. APPOINTMENT OF RSL

13.1 In the event of the Council (acting reasonably) considering that the Appointed RSL is unreasonably delaying or not using proper or sufficient endeavours to secure a binding contract with the Owner for the purchase of the Serviced Land the Council shall be at liberty to serve notice in writing on the Appointed RSL (Initial Notice) requiring it to unconditionally exchange contracts with the Owner within 28 days of such notice in default of which and for a period of 7 days thereafter the Council shall be entitled to withdraw in writing its approval of the Appointed RSL (Final Notice) and immediately thereafter appoint an alternative Appointed RSL. In the event of the

Council not serving the Final Notice in accordance with the provisions of this clause the Council shall not be entitled to seek withdrawal of its approval of the Appointed RSL other than by re-serving an Initial Notice .

13.2 For the avoidance of doubt the Owner shall only be entitled to dispose of the Affordable Housing Units to an Appointed Registered Social Landlord.

14. The Development shall be deemed to be commenced on the date on which any material operation as defined by Section 56(4) of the Act is carried out pursuant to the Planning Permission

15. None of the provisions of this Agreement shall be binding upon a mortgagee in possession of the Land or the Serviced Land which said mortgagee in possession may sell and dispose of the Land or the Serviced Land free from the terms of this Agreement and upon such sale as aforesaid this Agreement shall become null and void and nor shall the terms of this Agreement be binding upon any receiver appointed by such mortgagee in possession of the Land or Serviced Land SUBJECT TO the said mortgagee in possession first using its reasonable endeavours to sell and transfer the Land or the Serviced Land to an alternative Registered Social Landlord first approved in writing by the Council's Director of Corporate and Community Development such approval not to be unreasonably withheld or delayed PROVIDED ALSO that the said mortgagee shall not be obliged to sell or convey to an alternative Registered Social Landlord under this clause for a consideration less than that which the mortgagee requires to redeem its borrowing upon the Land or Serviced Land or that which the mortgagee could obtain on the open market whichever is the lesser

16. The Owner shall immediately notify the Council's Director of Corporate and Community Development in writing within seven days of any breach (or receipt of

notice of any alleged breach) of any term contained in any mortgage or legal charge of all or any part of the Land or the Serviced Land

17. THIRD PARTIES

17.1 Nothing in this Agreement confers any right on any third party to enforce any of the obligations rights or covenants on the part of the (Council) (Owner) under this Agreement whether in accordance with the Contracts (Rights of Third Parties) Act 1999 or otherwise (save for the purposes of this Clause 17 any individual house or flat buyer or occupier who shall buy or occupy a dwelling)

IN WITNESS whereof the parties hereto have set their hands or caused their Common Seals to be hereunto affixed the day and year first before written

THE SCHEDULE

Covenants by the Owners

1. Affordable Housing

1.1 Of the houses permitted by the Planning Permission for erection upon the Land shall be houses for sale on the open market (“Non Affordable Housing”) and shall be Affordable Housing Units.

Of the Affordable Housing Units:-

shall be one bedroom 2 persons flats of not less than 45 sq metres;

shall be two bedroom 3 persons flats of not less than 55 sq metres;

shall be two bedroom 3 persons bungalows of not less than 65 sq metres;

shall be two bedroom 4 persons houses of not less than 75 sq metres;

shall be three bedroom 5 persons houses of not less than 85 sq metres;

shall be four bedroom 6 persons houses of not less than 95 sq metres;

PROVIDED THAT the location tenure mix size cost standard and level of servicing shall be in accordance with the Council's Affordable Housing – Supplementary Planning Document

- 1.2 Not to commence the Development until a programme and timetable for the provision of the Affordable Housing Units and the location tenure size cost standard and level of servicing of the same has been submitted to and approved by the Council in writing
- 1.3 The Owner shall not occupy or allow (more than) any of the Non Affordable Housing Units to be occupied until of the Affordable Housing Units have been constructed (and for the avoidance of doubt construction of the Affordable Housing Units shall not be achieved unless all the Services are connected and operating and the Affordable Housing Units are accessible by both vehicles and pedestrians) and they are ready for occupation by a person or persons satisfying the Qualifying Criteria
- 1.4 Upon completion of the construction of the Affordable Housing Units in accordance with Clause 1.3 above the Owner shall transfer the Affordable Housing Units to the Appointed RSL an interest equivalent to that owned by the Owner. For the avoidance of doubt this shall be construed as a transfer of a freehold interest in the case of a house or a term of years certain of at least 125 years in the case of flats and apartments
2. The Owner shall not later than 3 months after the date of this Agreement serve notice in writing on the Council that they require the Council to appoint the Appointed RSL
 - 2.1 Upon the Council confirming in writing to the Owner the identity of the Appointed RSL the Owner shall exchange contracts with the Appointed RSL for the

purchase of the Serviced Land within 2 months of such notice in default of which the Council shall be at liberty to recalculate the Commuted Sum

2.2 The Owner shall not commence the Development until such time as it has exchanged contracts with the Appointed RSL for the purchase of the Serviced Land and produced to the Solicitor to the Council a certified copy of the contract and memorandum of exchange.

2.3 The Owner shall if required by the Council enter into an Agreement under the Highways Act 1980 Section 38 and/or Section 278 and/or the Water Industry Act 1991 Section 104 or any provision to similar intent or an Agreement with a water undertaker or a drainage undertaker (within the meaning of the Water Industry Act 1991) or the Environment Agency or an internal drainage board (within the meaning of the Water Resources Act 1990 or the Drainage Act 1991) or other appropriate authority as to water supply or drainage or surface and/or foul water from the Serviced Land or an Agreement with any competent authority or body relating to other services

2.4 Before commencement of the Proposed Development the Owner shall pay to the Council the Commuted Sum

2.5 The Owner shall in any Transfer document to the appointed Registered Social Landlord require a covenant obliging the Registered Social Landlord to reinvest any net capital receipts (for the avoidance of doubt net receipt shall be the amount received by the Registered Social Landlord after deduction of all legal and other costs reasonably incurred in connection with the transaction that release the equity and any sums to be repaid to a grant or mortgage provider) from future release of equity in the Affordable Housing Units such reinvestment shall be in the provision of other affordable housing in the Parish

Surrounding Area or the Cotswold District

THE COMMON SEAL of COTSWOLD)
DISTRICT COUNCIL was hereunto)
affixed in the presence of:-)

Solicitor to the Council

THE COMMON SEAL of)
was hereunto affixed in the presence of:-)

Director

Secretary

THE COMMON SEAL of)
was hereunto affixed in the presence of:-)

Authorised Signatory

Authorised Signatory

DATED

200

COTSWOLD DISTRICT COUNCIL

-and-

-and-

PLANNING AGREEMENT

(By Agreement)

Under Section 106 of the Town and Country
Planning Act 1990 relating to

Gloucestershire

Standard Section 106 Agreement 3:

Clauses relating to Off Site Contribution

2. **PAYMENT FOR THE PROVISION OF AFFORDABLE HOUSING BY THE COUNCIL**

2.1 The Owner agrees with the Council to pay to the Council the Affordable Housing Contribution of _____ Pounds (£ _____) such payment to be made prior to the commencement of the Proposed Development to enable the Council to provide affordable housing within _____ or the Surrounding Area

2.2 In the event that all or part of the Affordable Housing Contribution is unspent or uncommitted at the expiry of five years from the date of payment the Council shall within fourteen days thereafter return to the Owner any such unexpended or uncommitted sum together with interest thereon from the date of payment until repayment at the rate published for such period by Lloyds TSB Bank PLC

2.3 The Council agrees with the Owner that Affordable Housing Contributions shall be used towards the provision of affordable housing in support of providing for local housing needs in _____ and the Surrounding Area and for no other purpose

* Definition of Affordable Housing Contribution to be inserted in body of Agreement

Note: this sum is intended to be the estimated development costs (agreed between the parties) of acquiring and constructing to the point of disposal the percentage of affordable housing within the proposed development which the Council considers it would require if it had been appropriate LESS the amalgamated sums which an RSL would pay for such Units by reference to the matrix produced by the Council's Affordable Housing Pricing Policy

Appendix C – Preferred Development Partners for Affordable Housing

Establishing a Partnership

Providing affordable housing is a key priority for the Council. The Council enables the development of affordable housing through working in partnership with local housing organisations. To ensure the local housing needs in Cotswold District are best met, the Council has sought to establish a partnership arrangement with Registered Social Landlords to provide affordable housing on Section 106 sites.

A thorough selection process has been carried out (Summer 2006) to identify the Council's preferred partner housing associations for new affordable housing development in the district. This process involved the assessment of a wide range of matters relevant to the delivery and management of affordable housing in the Cotswolds. As a result of this process, two general needs providers and one specialist provider have been selected:

General needs providers –

Bromford Housing Group
(Development Team)
1 Miller Court
Severn Drive
Tewkesbury Business Park
Tewkesbury
Glos. GL20 8ND
Tel: 0845 6050609
www.bromford.co.uk

Gloucestershire Housing Association
2 St Michael's Court
Brunswick Road
Gloucester
GL1 1JB
Tel: 01452 529255
www.glosha.co.uk

Specialist provider -

Hanover Housing Association
Gateway House
Cornbrash Park
Chippenham
Wiltshire
SN14 6RA
Tel: 01249 707000
www.hanover.org.uk

The performance of the Council's preferred Registered Social Landlords will be assessed and the partnership reviewed.

Nomination of Preferred Partner

The Council will nominate one or more of its preferred partners to work with prospective developers from an early stage in the development process. This will be done in consultation with the Council's Preferred Partners.

The nomination will normally occur during pre-application discussions with prospective developers on sites where the provision of affordable housing is likely to be required through Section 106 Agreements.

Appendix D – Affordable Housing Pricing Policy

The Council has supplemented its affordable housing planning policy by publishing prices (for social rented) and a formula (for subsidised low cost home ownership) which its general needs preferred partner RSLs can afford to pay developers for affordable housing, without the aid of public subsidy.

Similar policies have been adopted by other planning authorities to good effect, most notably by Bristol City Council, South Gloucestershire Council and North Wiltshire District Council. Other authorities in the region are considering adopting the same approach.

Developing the Prices

The Council's general needs Preferred Partner RSLs have assessed the price that they can pay developers for different affordable housing dwelling types and sizes, and by tenure. This assessment has been made using a series of detailed assumptions relating to, for example, market values, revenue costs, management costs, borrowing costs, and rents. An independent valuer (RICS Member) was also commissioned to verify the market value assumptions used. The Government's regime of 'target rents' was also used. 'Target rents' are considered to be affordable, they are based on local incomes and house prices.

The Partner RSLs provided details of the assumptions they used to justify the prices quoted to the Council. The Council has used specialist consultants to critically review the pricing information provided by the Partner RSLs. Overall, the Council is confident that the prices and formula quoted in the following matrices are fair, robust and defensible.

The prices and formula are applicable to Section 106 sites where there is a mix of affordable and open market housing (not 'rural exception' sites) and to general needs housing. Specialist housing has different costs, and will be negotiated separately when required. The prices given assume no public subsidy.

Prices for Social Rented Affordable Housing in Cotswold District

Matrix 1: Prices Partner RSLs will pay for Social Rented Affordable Housing

Dwelling Type	Minimum Floor Area m2	Price
1 Bed 2 Person Flat	45	£42,000
2 Bed 3 Person Flat	55	£50,500
2 Bed 3 Person Bungalow	65 (allows space for wheelchair use)	£59,000
2 Bed 4 Person House	75	£59,000
3 Bed 5 Person House	85	£69,500
4 Bed 6 Person House	95	£76,000

The prices in Matrix 1 have been based on target rents for 2008/09 assuming that no new units purchased at matrix prices will be completed and let until then.

Formula used to calculate prices for subsidised low cost home ownership (shared ownership / new build homebuy) Affordable Housing in Cotswold District

Matrix 2: % of open market value (OMV) Partner RSLs will pay for subsidised low cost home ownership Affordable Housing

Partner RSLs will pay 57% of the determined Open Market Value to the developer for subsidised low cost home ownership affordable housing.

The open market value, no matter the location or house type, will determine the price paid by the RSL.

To ensure affordability of shared ownership housing for local people, the rent on the retained share of equity shall be no more than 1.5% of its value. The Partner RSLs can afford to deliver 50% equity based on 1.5% rent.

The formula applied in deriving the 57% figure is:

Purchase Price = Open Market Value x 50% (equity share to be sold) x 1.5% (rented income expressed as a % of RSL's 50% retained equity) - £150 (RSL admin. cost & insurance premium) X 14.53 (Year's Purchase) + [O.M.V/2] - £8,500 (solicitor's costs & on-costs) x 105% (Anticipated Retail Price Index to March 2008)

Purchase Price/Open Market Value x 100 = 57 %

The advice of an independent valuer (RICS Member) will be used to help determine the agreed Open Market Value.

Review of Prices

The prices given in Matrix 1 are based on rents applicable from 2008. The formula to calculate the Purchase Price for shared ownership includes a factor to project the price to March 2008. The prices and percentage are therefore valid until the end of March 2008. The Council will review and publish an updated schedule for both matrices on a regular basis.

Appendix E – Cotswold District Council Contacts

Planning Application including pre application discussions and site specific matters

Principal Planner
Development Control
Development Services
Cotswold District Council
Trinity Road
Cirencester
GL7 1PX
Tel: 01285 623000

Section 106 agreements / Legal Issues

Principal Solicitor
Legal - Support Services
Cotswold District Council
Trinity Road
Cirencester
GL7 1PX
Tel: 01285 623000

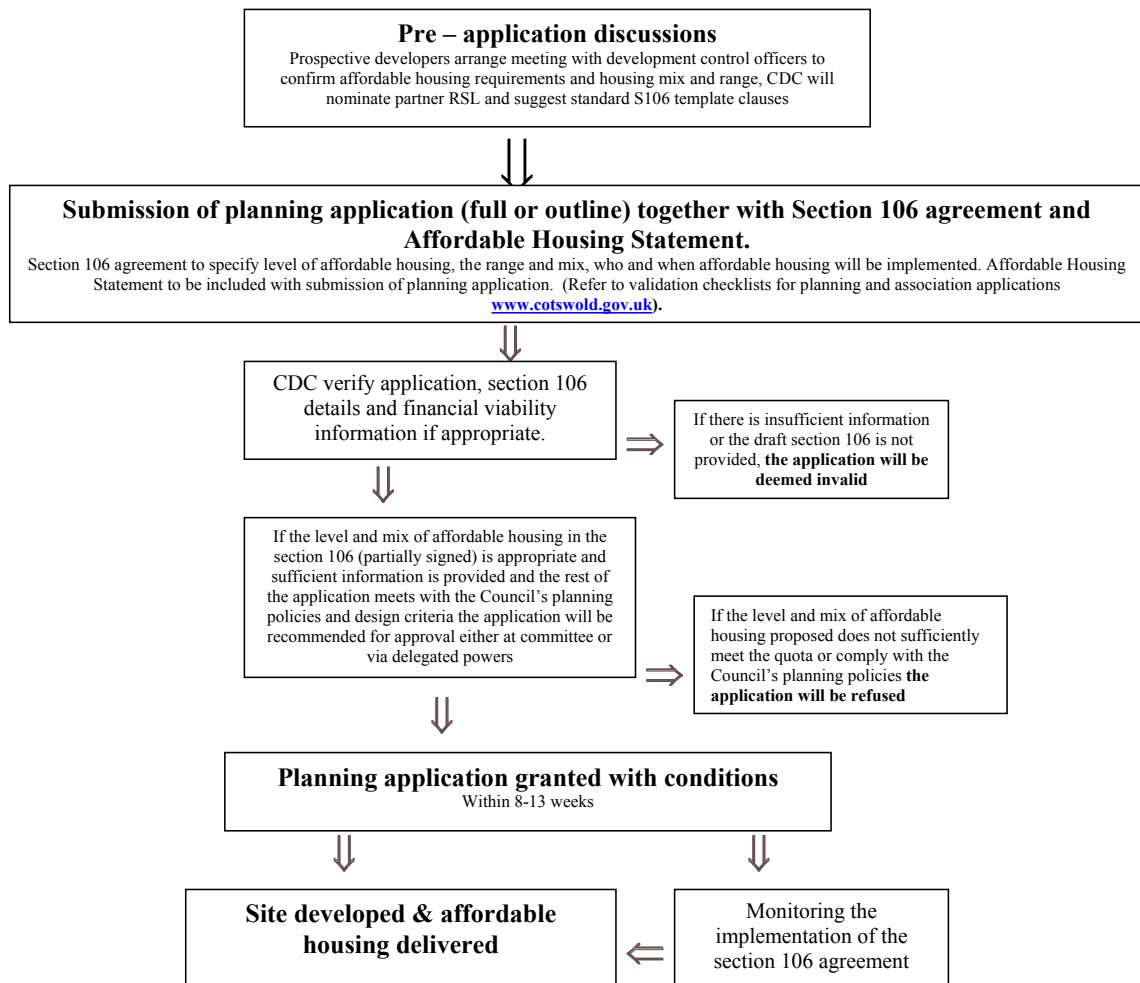
Affordable Housing ‘enabler’ including housing range and specifications

Development Officer
Community, Health & Housing
Cotswold District Council
Trinity Road
Cirencester
GL7 1PX
Tel: 01285 623407

Planning Policy

Forward Planning Manager
Community & Corporate Development
Cotswold District Council
Trinity Road
Cirencester
GL7 1PX
Tel: 01285 623000

Appendix F – Process Flow Chart for Planning applications for Development requiring affordable housing contribution



Appendix G – General Guiding Principles

Cotswold District Council will:

- At the pre-application stage meet to discuss sites and affordable housing provision;
- Upon receipt of the application undertake the appropriate consultations;
- Refuse Planning Permission if details of provision and delivery of affordable housing are not submitted or no agreement is reached at the end of negotiation process for affordable housing;
- Nominate a preferred partner RSL;
- Act as 'honest broker' and recognise the need for an effective working relationship with the RSLs, other CDC departments, the PCT and the County Council;
- Develop negotiating specialists and sufficient resources to ensure that requirements are met;
- Provide clear advice on the design and location of affordable housing as well as the mix and type that will be required;
- Proactively monitor housing needs throughout Cotswold District, so that information is kept up to date;
- Point out the guidelines for providing financial information including abnormal costs;
- Provide a realistic financial viability template;
- Keep the details of the Council's Affordable housing pricing policy (Appendix D) up-to-date.
- Bring in outside specialist advice to independently assess claims of financial viability;
- Provide draft Section 106 template clauses for agreement;
- Inform developers early on if the details within draft section 106 submitted with the development application are not acceptable and likely to result in refusal of the application;
- Deal with applications within statutory timescales;
- Monitor affordable housing and financial contributions through section 106 agreements.

Developers will need to:

- Liaise as early as possible with the local authority through pre application discussions before a planning application is submitted;
- Agree to bring in early the Council's nominated preferred partner RSL to discussions and where possible submit a joint planning application;
- Prepare and submit an affordable housing statement to include number of units, mix of house types and tenure.
- Transfer the land for affordable housing to the RSL prior to the occupation of any dwellings on the site;
- Operate an open book approach to negotiations within specified contributions;
- Justify with empirical evidence any case for lower than local plan provision;
- Agree not to artificially subdivide sites and buildings to circumvent the thresholds for affordable housing
- Bring in legal experience at a very early stage;
- Submit a draft section 106 agreement specifying how, what, and when affordable housing will be delivered with full or outline planning application;
- Do site appraisals and look into the relevant demand and policies;
- Be flexible on the house types that will be provided;
- Meet the Government's scheme development standards, same as an RSL.

RSLs will:

- Operate with integrity and work with CDC and the Developer / Agent and not independently;
- Achieve good quality build standards to ensure the delivery of tenure blind housing.

Reference should be made, in due course, to the emerging 'Officer Protocol for the Negotiation and Completion of S106 Contributions' currently under preparation by the Council.

Glossary

Annual Monitoring Report:

Part of the Local Development Framework, which assesses the implementation of planning policies in Cotswold District. It is published and submitted to the Government Office for the South West at the end of each calendar year.

Affordable Housing:

Housing built for sale or rent at a price level below the going market rate and which is related to the ability to pay by those in need. It is necessary to demonstrate that the housing will be genuinely affordable for the target group that the scheme is intended to help and that it will remain so at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision (PPS 3 Annex B 'Definitions of Affordable Housing'). Schemes are only usually undertaken once the level of need has been established by a housing needs assessment.

Development Plan Document:

Spatial planning documents that are subject to independent examination, and together with the regional spatial strategy, will form the development plan for a local authority area. They can include, for example, a Core Strategy that sets out the spatial vision and objectives for an area, and site specific allocations.

Exception sites:

National planning guidance enables the provision of affordable housing to be augmented by an 'exception' policy in rural areas. This enables the Council to grant planning permission on land within or adjoining rural settlements of below 3000 population, where residential development would not normally be permitted. The sites that come forward with proposals for affordable housing are termed 'exception sites'.

Key Workers:

Workers who are essential to delivering local services.

In lieu provision:

There may be exceptional circumstances, where it is impractical or inappropriate for the affordable housing to be provided on the subject site. In such cases a financial contribution will be sought from the developer instead of providing affordable housing.

Intermediate Housing:

May be rented or home ownership provided at below open market values but above affordable housing.

Local Development Framework (LDF):

A portfolio of local development documents which together provide a framework for delivering the spatial planning strategy for a local planning authority area. The LDF consists of a saved Local Plan, Development Plan Documents, Supplementary Planning Documents, the Statement of Community Involvement, the Local Development Scheme and Annual Monitoring Report.

Local Plan:

The Cotswold District local plan, along with the Gloucestershire Structure Plan, form the 'Development Plan' for Cotswold District. The Development Plan sets out policies and proposals for the development and use of land and buildings. Planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Under the Planning and Compulsory Purchase Act (2004), the Development Plan will be replaced by the Regional Spatial Strategy and Development Plan Documents contained within the Local Development Framework. Whilst the LDF is being prepared, the Cotswold District Local Plan is 'saved' for at least three years.

Mortgagee in possession:

Clauses in legal documents which would enable lenders of private finance to dispose of property on the open market as a last resort if a borrower were to get into financial difficulties.

New Build Homebuy:

Shared ownership of newly built properties.

Quota sites:

Sites where the Council's Affordable Housing Planning Policy (Policy 21 of the Local Plan) applies. A section 106 agreement is normally used to secure the appropriate quota of up to 50% affordable dwellings.

Registered Social Landlord (RSL):

An organisation, usually a housing association, which is registered by the Housing Corporation to provide affordable housing.

Shared ownership:

Affordable housing which is leased by the landlord, usually a RSL, and which the occupier owns a percentage share and pays rent on the remainder.

Social rented:

Affordable housing in which the occupier rents the property at a 'target rent', below market rents, usually from a RSL.

Supplementary Planning Document (SPD):

These expand on policies set out in a Development Plan Document or saved Local Plan or provide additional detail. They do not form part of the Development Plan and are not subject to independent examination.

Target rents:

Rents based on a national Government system based on local incomes and house prices.

Tenure blind design:

Housing schemes where private housing and affordable are integrated through design.



COTSWOLD
DISTRICT COUNCIL

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